

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

RANDY GROFF AND VIRGINIA GROFF;

Mills County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2010-AQ- **36**

NO. 2010-SW- **31**

TO: Randy and Virginia Groff  
609 Chestnut Street  
Osage, IA 50461

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Randy and Virginia Groff for the purpose of resolving violations related to illegal handling and disposal of solid waste on their property, including the illegal open burning of solid waste. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Eric Wiklund, Field Office 2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street S.W.  
Mason City IA 50401  
Phone: 712-243-1934

**Relating to legal requirements:**

Jon Tack, Attorney for the DNR  
Iowa Department of Natural Resources  
502 E 9<sup>th</sup> St.  
Des Moines, IA 50319  
Phone: 515-281-8889

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part

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1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Randy and Virginia Groff own a property located at 3676 River Road, Osage, Iowa. A two-stall garage is located on the property.

2. On March 12, 2010, the DNR received an anonymous complaint alleging that Jordon Groff, the seventeen-year-old son of Randy and Virginia Groff, was illegally demanufacturing discarded appliances without a permit on a property at 3676 River Road, Osage. The site was visited on that date. It was observed that a couch, several tires and other miscellaneous solid waste had been burned at the site.

3. On March 17, 2010, Jordon Groff indicated that he had been collecting discarded appliances and selling them to a metal recycler, Buck's Recycling, but he had not been demanufacturing any of the discarded appliances.

4. On March 19, 2010, the DNR contacted Buck's Recycling. Buck Lake, owner, indicated that all appliances he has received from Jordon Groff had been demanufactured, meaning that the hazardous components such as mercury, PCB's, and refrigerants had been removed.

5. On March 19, 2010, the DNR contacted Virginia Groff. Mrs. Groff then informed the DNR of Jordon Groff's age. Virginia Groff was instructed to determine what Jordon Groff is doing with the hazardous waste components from the discarded appliances and to provide that information to the DNR.

6. On March 25, 2010, the DNR issued a Notice of Violation in regard to illegal demanufacturing of discarded appliances without a permit and illegal open burning of solid waste.

7. On March 26, 2010, the DNR contacted Randy Groff. Randy Groff admitted that Jordon Groff had been illegally demanufacturing discarded appliances and illegally disposing of the components by mixing them in with auto parts for sale to an auto salvage yard.

8. On March 12, 2010, the DNR issued a Notice of Violation to Randy and Virginia Groff due to the illegal demanufacturing of discarded appliances without a permit, illegal disposal of components, and illegal open burning on their property.

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**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2 states that no person shall allow, cause, or permit open burning of combustible materials except as provided in subrules 567 IAC 23.2(2) (variances) and 567 IAC 23.2(3) (exemptions). The burning documented in this matter does not fall under 567 IAC 23.2(2) exemptions and the burning of trade wastes is specifically prohibited. The above facts demonstrate a violation of this provision.

3. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The DNR has documented violations of these provisions.

4. Pursuant to 567 IAC 118.2(2), a person must obtain an appliance demanufacturing permit from the DNR before conducting any demanufacturing activities. The DNR has documented violations of these provisions.

**V. ORDER**

THEREFORE, the DNR orders and Randy and Virginia Groff jointly agree to pay a penalty in the amount of \$1,000 by August 15, 2010.

**VI. PENALTY**

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$1,000. The administrative penalty is determined as follows:

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Economic Benefit – The failure to obtain and comply with an appliance demanufacturing permit has provided an economic benefit. The prerequisite training course costs \$180. Additional avoided costs include financial assurance and disposal costs. The illegal open burning of solid waste results in the avoidance of time, labor and disposal costs. Based upon these considerations, a penalty of \$300 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. The illegal open burning of solid waste releases toxins that endanger human health and the environment. Discarded appliances contain hazardous wastes including PCBs, mercury, and refrigerants. The improper handling, storage, and disposal of discarded appliances threaten the release of hazardous wastes into the atmosphere. Therefore a penalty of \$500 is assessed for this factor.

Culpability – Jordon Groff removed components from appliances because the metal recycler would not accept them without demanufacture. This fact should have forewarned Jordon Groff that the components required special handling and disposal. Because of the age of Jordon Groff and the uncertainty in regard to the level of knowledge of Randy and Virginia Groff in regard to the activities occurring on their property, only \$200 is assessed for this factor.

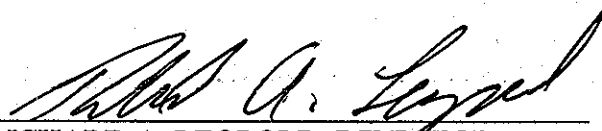
**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Randy and Virginia Groff. For that reason Randy and Virginia Groff waive their rights to appeal this administrative consent order or any part thereof.


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**VIII. NONCOMPLIANCE**

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Total compliance with all provisions of Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 12 day of  
August, 2010.

  
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RANDY GROFF

Dated this 9<sup>th</sup> day of  
August, 2010.

  
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VIRGINIA GROFF

Dated this 8 day of  
August, 2010.

Field Office #4; VI C; VII C.1